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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,

Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,

Appellees.

STATEMENT AS TO JURISDICTION

of the Supreme Court Complying With Rule 15 of the Rules of the Supreme Court of the United States.

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Appellants, in accordance with Rule 10 [Section 3] did on the 4th day of March, 1958, file with the District Court of Appeal of the State of California, Second Appellate District, a notice of appeal from the

final judgment of said Court, entered in said action on December 6, 1957.

CITATIONS AND OPINION BELOW.

The judgment of the Superior Court of the County of Los Angeles of the State of California, a court of general jurisdiction, was entered on December 30, 1956 and is transcribed in the Transcript of the record, pages 84 to 85.

The opinion of the District Court of Appeal of the State of California, Second District, Division Three, was entered on December 6, 1957 and is reported in the California advance reports in 155 A.C.A. 885, and is printed herein as an Appendix. A timely petition for rehearing was denied by the same Court on January 3, 1958. A petition for a hearing by the Supreme Court of the State of California was made but denied on January 28, 1958.

STATUTES INVOLVED.

A. The 5th and 14th Amendments to the Constitution of the United States and 28 U.S.C.A. 1257 are relied upon to sustain the jurisdiction of this Court.

B. The statutes of the State of California, the validity of which are involved, are the Industrial Farm Act of California [Statutes 1921, p. 1615, chapter 843, which is Sections 4100 to 4135 of the Penal Code of California, which statute deals with the exer-

cise of the right of eminent domain for prison farm purposes], and Am. Code Amdts. 1873-74, p. 355, Statutes 1911, p. 618, Statutes 1913, p. 852, Statutes 1949, chapter 978, which is Section 1239 of the *Code of Civil Procedure of California* dealing with the general law for exercise of eminent domain.

The pertinent provisions of the Industrial Farm Act of California which are involved are:

> "Section 1. It is the purpose of this act to make possible the substitution of constructive labor for profitless prison confinement in order that those who are charged with or convicted of public offenses and deprived of their liberty may become better citizens because of their disciplinary experience."
>
> "Section 4. For the purpose of establishing such farm the board of supervisors may acquire by condemnation, purchase, lease or donation, as many acres of land suitable for agriculture as may be necessary for the purpose of such farm."
>
> "Section 11. So far as practicable those in custody on such industrial farm shall be employed in productive labor. The products of the farm shall be used: first, to maintain the prisoners and employees on such farm; second, to supply other county institutions having need of the same with the farm's products; third, to supply the needs of paupers, incompetents, poor and indigent persons and those incapacitated by age, disease or accident with whose relief and support the county is charged."

The pertinent provisions of Section 1239 of the *California Code of Civil Procedure* are:

"Sec. 1239. Estates and rights subject to be taken. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or for the protection of water bearing lands from drought therefrom of any character whatsoever from any adjacent lands, or when the property is taken by any mutual water system, county, city and county, or incorporated city or town or a municipal water district, or other political subdivision.

2. An easement, when taken for any other use; . . . ."

STATEMENT OF THE CASE.

The County of Los Angeles, acting under the authority of the Industrial Farm Act, had the Dunn ranch appraised at the agricultural value of $100.00 an acre and then sought to buy it at this agricultural price. This property was wildcat oil property and, when the Dunns wanted to reserve the oil rights, the county officials asserted that the county could and would condemn these oil rights, and therefore the Dunns could not reserve them

"for the reason that the property was to be used as a prison farm and that, in order to protect the property for that purpose, no prospecting or

drilling for oil could be made thereon." (Tr. p. 4, lines 8 to 12.)

The Dunns believed the foregoing assertion and, under threat of condemnation, sold their property at the agricultural price fixed by the county.

After the acquisition of this property, the County of Los Angeles leased the underlying oil rights to The Texas Company on a royalty basis, and The Texas Company prospected, drilled and found oil. The Texas Company and the County of Los Angeles have thus used the underlying oil rights in private business for the mutual financial benefit of both the county and the company.

The position of the appellants in the state Courts was—that, under the Industrial Farm Act, the public use to be served was the substitution of farming for "profitless prison confinement" and therefore the public use was restricted to farming activities which required only the use of the surface of the ground and that, under the authority of *Southern Pacific Railroad Co. v. Savings Union,* 146 Cal. 290; *Cushing v. Gillespie,* 256 Pac.2d 418, 36 A.L.R.2d 1420, Encyclopedie annotation of cases, 36 A.L.R.2d 1424 relating to the condemnor's acquisition of rights to minerals underlying land taken under eminent domain, that where only the surface of the ground is required to fulfill the public use, the condemnor acquires the permanent and exclusive use of the surface but acquires no title to the minerals, including the oil, beneath the surface, leaving the landowner free to exploit these oil rights by slant drilling or otherwise.

It was also the position of the appellants that since the county bought this property at its agricultural value under threat of condemnation, that the county's claim that it acquired the oil rights is violative of the 5th and 14th Amendments to the Constitution of the United States against the taking of private property without just compensation, for in fact the county paid no compensation whatsoever for the oil rights.

It was also the further position of the appellants that a public agency could not take the private property of one citizen under the guise of a public use and then convey it to another private citizen for the joint gain of the public agency and the other citizen.

The trial Court, through the medium of a judgment on the pleadings, confirmed the title of the county to the oil rights. The District Court of Appeal likewise confirmed this taking. We quote:

> "As above stated, the county was empowered to acquire the fee title by condemnation or purchase. A fee title to property includes the oil rights. Oil rights are defined as the exclusive right to drill for and produce oil from the land." (Tr. Appendix A, p. xvi.)

Obviously, the foregoing conclusion is based on the premise that the right to take a fee title is necessary to fulfill the public use outlined in the Industrial Farm Act. The county, however, instead of keeping the fee and devoting it in its entirety to this public use, proceeded forthwith to devote the oil rights to the private enrichment of the county and The Texas Company.

The District Court of Appeal, in order to justify the taking of the private property of the Dunns and devoting it to the private use of the county and The Texas Company, enunciated an extremely novel doctrine of law, to-wit, that a governmental agency, acting under the pretext that the ownership of the underlying oil rights was necessary to prevent the escape of prisoners, could, after acquiring such oil rights, change this policy and decide that the oil rights were no longer needed to protect the sanctity of the prison farm, and could devote them to a private use by leasing them on a royalty basis to The Texas Company. We quote:

> "Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison." (Tr. Appendix A, p. xvii.)

The District Court ignored the fact that these oil rights were taken without just compensation.

QUESTIONS PRESENTED.

The following questions are presented:

(a) The primary question is—does the drilling for, production and sale of oil constitute a public use?

If it does not, then the following questions are presented.

(b) Where the public use to be served requires only the use of the surface of the ground, can a state agency condemn the underlying mineral rights, including the right to drill for and produce oil?

(c) Can a state agency condemn private property for a purported public use and then lease or sell the private property so condemned to another private individual who utilizes the private property in private business for private gain?

(d) Did the County of Los Angeles have the right, under the Industrial Farm Act of California, which statute deals with the exercise of the right of eminent domain for prison farm purposes [Statutes 1921, p. 1615, chapter 843—which is Sections 4100 to 4135 of the Penal Code of California] and under Code Amendments 1873-74, p. 335, Statutes 1911, p. 618, Statutes 1913, p. 852, Statutes 1949, chapter 978, which is Section 1239 of the *Code of Civil Procedure of California* dealing with the general law for the exercise of eminent domain—to condemn the oil rights underlying the surface of the Dunns' ranch—or only the right to condemn the surface of the land sufficient to satisfy the farming purposes set forth in the Industrial Farm Act?

(e) Can a state agency, acting under the authority granted by the Industrial Farm Act, under the guise of a policy program in preventing the escape of prisoners, have the right to take a fee title, including the oil rights, refusing the landowners the reservation of

such oil rights—and then subsequently change the policy program, and dispose of these oil rights to a private corporation, and mutually engage with said private corporation in the private venture of drilling for, producing and selling oil for the mutual benefit of the condemnor and the private corporation?

(f) If the Industrial Farm Act and Section 1239 authorize the purchase and condemnation of oil rights, are these statutes invalid in violating the 14th Amendment to the Constitution of the United States?

(g) If the Industrial Farm Act and C.C.P. 1239 do not expressly authorize the taking of such oil rights but are construed by a state agency, namely, a county, as impliedly granting to that state agency the discretionary power to take such oil rights, is such construction by the agency a violation of the 14th Amendment to the Constitution of the United States?

(h) If the construction of such statutes by such state agency is upheld by the highest Court of the state, is such judicial interpretation violative of the due process laws of the 14th Amendment to the Constitution of the United States?

(i) Is it a violation of the 14th Amendment to the United States Constitution, and a taking of private property without just compensation, if a state agency places a value on real property based solely on the value of the land for agricultural uses, and asserts that it has the right to condemn the fee title, including the oil rights, at the agricultural value thus fixed, without additional compensation for the oil

rights, and threatens the land owner with costly condemnation proceedings if he refuses to consent to such taking, and the land owner, relying on such assertions and threats, sells the land at the agricultural value thus fixed by the state agency?

THE FOREGOING FEDERAL QUESTIONS ARE SUBSTANTIAL AND MEET THE REQUIREMENTS OF RULE 15(e).

The essential constitutional issue, which is not only substantial and unresolved but also of the very highest importance in this day when governmental agencies are grasping for control of private property without just compensation, is whether a state, as an incident to the acquisition of real property to be devoted to a public use, can acquire, under its eminent domain power, further property rights unrelated to any possible public use, such as the right to drill for and produce oil? A correlative and equally important constitutional question is whether, under the guise that it is a necessary incident to the public use, the state may exploit the property for the private gain of the state and of a private oil company. If this decision is allowed to stand, it is an authority which permits and authorizes a state or governmental agency to take private property for a purported public use and, having obtained it under this guise, to then devote it to the private gain of the state or governmental agency and of outside private individuals without paying the original owner just compensation for such non-public property.

THE RULINGS OF THE COURTS OF THE STATE OF CALIFORNIA WERE SUCH AS TO BRING THE CASE WITHIN THE PROHIBITIONS OF THE 5TH AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND, THEREFORE, WITHIN THE JURISDICTIONAL PROVISIONS OF THIS COURT.

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257.

The grounds relied upon as establishing the importance of the jurisdictional questions presented are as follows:

A. The acts of the Los Angeles County officials, in asserting the right to condemn the fee title, including the oil rights, in the real property owned by the petitioners; is an action by an agent of the state, which constitutes a deprivation of the rights of the Dunns protected by the 14th Amendment to the Constitution of the United States.

> "... whoever by virtue of public position under a state government deprives another of any right protected by that Amendment (14th Amendment) against deprivation by the state, 'violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it'."

Chicago B. & Q. R.R. Co. v. Chicago, 166 U.S. 226, 41 L.Ed. 979, 983;

Georgia Power Co v. Decatur, 281 U.S. 508, 74 L.Ed. 999;

Mooney v. Holohan, 294 U.S. 113, 79 L.Ed. 791-94.

B. The assertion of a right to condemn the fee title, including the oil rights, and the leasing of the same to The Texas Company upon a royalty basis, likewise constitutes a violation of the 14th Amendment.

> "The taking by law of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Article of Amendment of the Constitution of the United States."
>
> *Missouri Pacific R. Co. v. Nebraska*, 164 U.S. 403, 41 L.Ed. 489-495.

In *Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55, 81 L.Ed. 510 at 524, the Court says:

> "And this court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

C. The action of the State Courts in approving the taking of the Dunns' property, and the leasing of the oil rights to the Texas Company is authoritative action in construing and enforcing the laws of the State of California, and is the act of the state. The Federal guarantee of due process extends to such state action.

> "The action of State courts and of their judicial officers in their official capacities is to be regarded as action of the State within the meaning of the 14th Amendment."
>
> ". . . the Amendment makes void state action of every kind which is inconsistent with the guar-

anties therein contained, and extends to manifestations of State authority in the shape of laws, customs or judicial or executive proceedings."

"The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State and the Federal guaranty of due process extends to state action through its judicial as well as its legislative, executive or administrative branch of government."

Shelley v. Kramer, 334 U.S. 1; 92 L.Ed. 1161, p. 1181.

D. The enactment of a state statute which authorizes the taking of private property for other than a public use, or without just compensation, is in conflict with the United States Constitution.

Truax v. Corrigan, 257 U.S. 312, 66 L.Ed. 254:

". . . it is also true that the legislative power of a state can only be exerted in subordination to the fundamental principles of right and justice which the guaranty of due process in the 14th Amendment is intended to preserve, and that a purely arbitrary or capricious exercise of that power, whereby a wrongful and highly injurious invasion of property rights, as here, is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles."

SPECIFICATION OF THE STAGE IN THE PROCEEDINGS IN THE STATE COURTS OF CALIFORNIA AT WHICH AND IN THE MANNER BY WHICH THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED, THE METHOD OF RAISING THEM, AND THE WAY IN WHICH THEY WERE PASSED UPON BY THE COURTS.

The federal questions were first raised by the complaint in the trial Court. The action was one for declaratory relief, in which type of action the complainant is required, under California law, to outline the controversy between the parties, so that the declaratory relief can be granted.

In paragraphs XIV, XV and XVI of the first cause of action in the complaint [Tr. pp. 9 and 10], it is alleged that under the provisions of the Industrial Farm Act [Statutes, p. 1615, ch. 843, 1921] the defendant county was specifically restricted by such legislative enactment to the acquisition of land useful solely for the purpose of a prison farm and suitable for agriculture, and that no part of the oil and gas underlying said property was necessary or appropriate for the purpose of the prison farm or for any other legitimate public use, and that said county was without any right or power to acquire rights in said oil and gas. It was further alleged [page 2] that the property was appraised for agricultural uses at $100 an acre and that the county made demand upon the plaintiffs to sell their property upon this valuation. That [page 3] the plaintiffs advised the county that the price offered was solely based upon an agricultural value and did not include the oil potential. At page 4, paragraph IX, it is alleged that the county

refused to offer plaintiffs additional compensation other than the price based upon agricultural use, that the agents of the county advised plaintiffs that plaintiffs could not reserve the mineral rights for the county had the right to condemn them for they were necessary to protect the property as a prison farm. It is there alleged [paragraph XVII, page 10] that a lease was made to The Texas Company of the oil and gas on the basis of a one-sixth royalty. In the third cause of action [page 14, paragraph II], it is definitely alleged that the defendant County of Los Angeles has taken property of the plaintiff, namely, the oil and gas underlying the land hereinbefore described, without just compensation having first been made to or paid into Court for plaintiff owner.

Having thus laid the basis by factual allegations, the constitutional questions were definitely outlined in the complaint where the statement of the actual controversy was made in accordance with the California law relative to declaratory relief and judgments. We quote:

> "That an actual controversy exists between plaintiff and defendant in that:
>
> (a) Plaintiff contends and alleges that the defendant County of Los Angeles was without any right or power to take any interest in plaintiff's land beyond that necessary for the use of said land for agricultural purposes and that defendant county had no right or power whatsoever to acquire in any fashion any of the oil and gas underlying said land, whereas the defendants contend that the defendant county had a right to

acquire by purchase or otherwise the entire fee, including the oil and gas.

(b) Plaintiff further contends and alleges that he has at all times been the owner of the minerals, including oil, gas and other hydrocarbons underlying said land and that the defendant county was without any right or power to enter into a lease respecting such minerals with defendant The Texas Company, whereas the defendants contend that said oil and gas lease is valid, and that defendant The Texas Company has all the rights of a lessee under said lease.

(c) Plaintiff contends and alleges that the defendant The Texas Company and other defendants at all times have been and now are without any right whatsoever in taking oil from said land." (Tr. pp. 11-12.)

On appeal in our opening brief before the District Court of Appeal and in the petition for hearing by the Supreme Court of the State of California (hereinafter referred to as "opening brief" and "petition for hearing"), the constitutional questions were directly presented to these august tribunals for their consideration. This presentation of constitutional questions was interlaced with reference to California decisions and arguments based upon state law. In this Statement we will refer to the various headings found in the respective briefs and to the text of the briefs, together with the authorities supporting our contentions, regardless of whether they are state or federal authorities.

(1) In the opening brief, a heading reads:

"In exercising the right of eminent domain, no more land and no greater interest can be taken than the public use requires."

In the petition for hearing, this same principle of law was dealt with extensively under the heading:

"Constitutional aspects of the controversy."

In the text of the briefs are found the following two statements:

"One of the elementary principles of the law of eminent domain is that it must be exercised for public use. The taking of property by eminent domain for a use not public is a violation of the basic and essential features of government. It amounts to the taking without due process of law and, therefore, is violative of the constitutional guarantees set forth in Amendment 14 of the United States Constitution."

and

"Neither an act of the Legislature nor the consent of the owner can increase that power. Any statute or ordinance is invalid which provides that private property may be taken for private use."

The following authorities were cited and quoted from:

29 C.J.S. p. 806; 29 C.J.S. pp. 816-818; 29 C.J.S. p. 820;

McCarty v. Southern Pacific Co., 148 Cal. 210;

Spring Valley Water Works v. San Mateo Waterworks, 64 Cal. 123;

Chicago B. & Q. R.R. Co. v. Chicago, 166 U.S. 226; 41 L.Ed. 979;

Tiffany "The Law of Real Property", 3rd edition, p. 682, Sec. 1253;

Warm Springs Irrigation District, et al. v. Pacific Live Stock Co., 270 Fed. 560;

Nichols on Eminent Domain, Sec. 150;

Hayneman v. Blake, 19 Cal. 579;

Lewis on Eminent Domain, Sec. 449, at p. 808.

(2) In the opening brief are the following headings:

"Oil rights in California constitute property separate and distinct from the ownership of the land."

"Oil rights owned by a municipality and the revenue derived therefrom are not devoted to a public use but constitute private property."

Oil rights are held in a proprietary as distinguished from a governmental capacity.

Kubach Co. v. City of Long Beach, 8 C.A.2d 567;

Graciosa Oil Company v. County of Santa Barbara, 155 Cal. 140;

Callahan v. Martin, 3 Cal.2d 110;

Standard Oil Company v. J. P. Mills Organization, 3 Cal.2d 128;

Bernstein v. Bush, 29 C.2d 773.

(3) In the opening brief is the following heading:

"Oil and mineral rights are not the subject of condemnation where the surface of the ground is sufficient to satisfy the public use to be served and, therefore, the Legislature cannot authorize

a county to condemn the oil rights lying beneath the surface and if it attempts to confer this power the act granting it is unconstitutional."

The following cases were referred to and quoted:

Southern Pacific Railroad Co. v. Savings Union, 146 Cal. 290;

Superior Oil Co. v. Harsh, 39 F.Supp. 467;

County School Trustees v. Free, 154 S.W.2d 935;

Cushing v. Gillespie, 256 P.2d 418;

McGregor v. Equitable Gas Co., 21 A. 13;

Alabama Power Co. v. Keystone Lime Co., 67 So. 833 and the encyclopedic note in 36 A.L.R.2d 1426.

(4) In the opening brief, the heading reads: "The Industrial Farm Act (Statutes 1921, page 1615, chapter 843, Penal Code, sections 4100 et seq) which authorizes the county to acquire appellant's land details the public purpose to be fulfilled which only requires the use of the surface of the land."

Pertinent sections of the Act were discussed to establish that the purpose of the Act was to put prisoners, who had been convicted of public offenses, onto a farm for the purpose of producing farm products and to engage in farm labor. The following authorities were cited to the effect that farming only requires the use of the surface of the land.

Hagenburger v. City of Los Angeles, 51 C.A. 2d 161;

Board of Supervisors v. Cothran, 84 C.A.2d 679.

(5) The heading in the Petition for Hearing reads:

> "The holding that a fee can be condemned, including the oil rights, where only the surface of the land is needed to satisfy the public use outlined in the Act, is contrary to the decision of the Southern Pacific Railroad Company v. Savings Union, 146 Cal. 290."

It was pointed out that cardinal rules of statutory construction had been violated, having to do with the pari materia construction of statutes and therefore, under Section C.C.P. 1239, when read in conjunction with the Industrial Farm Act, only an easement could be condemned. In addition, we stated that the Court has failed to apply the universal rule of construction of eminent domain statutes, namely, that such statutes are to be strictly construed against the sovereign, and in favor of the landowner and no greater estate can be taken than is necessary to fulfill the public use and, if an easement is sufficient, a fee cannot be taken.

It was argued in the briefs that the right to purchase was no greater than the right to condemn.

(6) In the opening brief, the heading reads:

> "The county could not purchase the oil rights from the Dunns for the Board of Supervisors could not knowingly invest tax money in the acquisition of property useful only in the prosecution of private business for private gain."

We cited:

City of Los Angeles v. Lewis, 175 Cal. 777;
City of San Francisco v. Ross, 44 Cal.2d 52.

(7) In the opening brief, the heading read:

"No greater title vested in the county by reason of the deed than was necessary to fulfill the public use set forth in the Industrial Farm Act."

Where a deed given in compliance with a special statutory provision from which the deed derived all of its validity, then the statute is construed into and with the deed, and the estate granted is limited to rights described in the statute, and by the Industrial Farm Act it is limited to a surface easement.

Sherman v. Sherman, 122 N.W. 439 at 442;
In re Nolta's Estate, 56 N.Y. Supp.2d 818;
26 *C.J.S.,* Deeds, Sec. 81;
Brown v. Inhabitants of Peabody, 116 N.E. 958;
Superior Oil v. Harsh, 39 Fed.Sup. 467;
and
People v. Thompson, 43 Cal.2d 13.

(8) In the petition for hearing it was also argued that mere convenience does not amount to a public necessity and, although it might be convenient to obtain the oil rights in order to protect the property as a jail farm, that no real necessity existed for such taking. The following cases were cited:

Chicago B. & Q. R. Co. v. Chicago, 166 U.S. 226;
Kansas City v. Hyde, 96 S.W. 201.

(9) In the opening brief it was contended that it was not true that in order to protect the property for a prison farm that no drilling for oil could be made

thereon, for the reason that the use of the surface of the ground satisfied the public use and the underlying oil rights added nothing to such satisfying of such public use, but remained the property of the landowner who could drill for oil by slant drilling or otherwise, citing *Southern Pacific Railroad Co. v. Savings Union,* 146 Cal. 290. It was also contended that the leasing of these same oil rights to The Texas Company and permitting The Texas Company to drill for oil showed that the claim that it was necessary to have the oil rights in order to protect the prison farm was a mere sham and camouflage, citing

Kansas City v. Hyde, 96 S.W. 201.

We respectfully submit that a constitutional question of far-reaching effect is presented by this Appeal and that the constitutional issues were presented to the state Courts and were, in effect, ignored and that, therefore, this Honorable Court should take jurisdiction.

Dated, San Francisco, California,
April 15, 1958.

HENRY W. ROBINSON,
Attorney for Appellants.

COURTNEY L. MOORE,
HERBERT POTHIER,
Of Counsel.

(Appendix Follows.)

Appendix

(Vol. 155 A.C.A. 885.)

In the District Court of Appeal
State of California
Second Appellate District

DIVISION THREE

Civil No. 22,043

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,
Plaintiffs and Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Defendants and Respondents.

OPINION

Appeal by plaintiffs from a judgment for defendants in an action for declaratory relief, to quiet title, for damages for inverse condemnation, and for an accounting.

On July 7, 1939, plaintiffs A. M. Dunn and Myrtle M. Dunn, husband and wife, executed a deed which recited that they granted to the county of Los Angeles certain real property. On July 11, 1939, the board of supervisors of said county accepted the deed and on July 20, 1939, the deed was recorded in the office of the county recorder. On April 20, 1950, the county, as lessor, and The Texas Company, as lessee, executed an oil and gas lease which contained a provision that The Texas Company had the exclusive right to drill for and produce oil upon the property. About August 22, 1950, oil was discovered by The Texas Company and since said date oil has been produced from wells upon said property in large quantities. On August 19, 1955, Mr. Dunn and Mrs. Dunn commenced this action. Defendants are the County of Los Angeles and The Texas Company. In various places in the complaint the word "plaintiff" appears without any designation as to which plaintiff is referred to. (Apparently that word was intended to refer to plaintiff Mr. Dunn.)

The allegations of the first cause (for declaratory relief) were, in part, as follows: Plaintiff A. M. Dunn was the owner of a 1400-acre ranch situated near Newhall. About 1937 the board of supervisors of said county voted to acquire land for a prison farm. The ranch of said plaintiff was selected by the county as the best site for the prison. In 1937, appraisers employed by the county appraised the ranch, for agricultural purposes, at approximately $100 per acre. The county, through its agents, demanded that plaintiff sell his property to the county upon the basis of

the appraisement of $148,000. The county, through its agents, "threatened the said plaintiff that unless said sale was made they would condemn said property, which condemnation would be costly to said plaintiff" and "would unquestionably result in the plaintiff receiving less for his property than the amount offered." At the time of the negotiations between plaintiff and the agents of the county there had been some exploration for oil and gas several miles north of plaintiff's property, but there had been no exploration for oil upon plaintiff's land, and no oil or gas had been developed on plaintiff's land or in the vicinity thereof. Plaintiff advised the county that the price offered by the county was solely upon an agricultural basis and did not include the oil potential, and he believed that oil and gas were on his said property, even though no oil had been developed at that time. Plaintiff repeatedly requested that the county permit him to retain the mineral rights, but the county refused such requests. Plaintiff then proposed that he be permitted to retain one-half of the mineral rights with the stipulation that he be permitted to drill upon the land "only with the written permission of the defendant county at locations to be designated by said county." The county would not agree to the proposals and refused to offer the plaintiff additional compensation for his property, other than the price based on agricultural use. The "agents of defendant county advised plaintiff that he could not reserve the mineral rights under any conditions for the reason that the property was to be used as a prison farm and that in order to protect the property for that purpose that no prospecting or drilling for oil could be made

thereon." Such representations were false, and the county and its agents knew that such representations were false at the time they were made. Plaintiff relied upon said representations. Shortly after the county acquired the property of the plaintiff, the county entered into oil and gas leases with various oil companies, whereby exploration for oil, including drilling operations, was conducted at various places upon the ranch. Plaintiff was unable to obtain the agreement of the agents of the county that he retain the oil and gas rights or any portion of same under any terms or conditions. "(R)elying upon the false and fraudulent representations that a prison farm could not be conducted if the exploration for oil was conducted thereon, and by reason of the threats made by the agents of the defendant county that they could force him to convey his land by condemnation action, plaintiff by reason of the fraudulent misstatements and threats of condemnation, entered into a lease and option agreement, whereby defendant county was given a lease for a period of five years of the following described property: . . . (legal description of property stated in complaint)." Said lease and option agreement provided that the county would have the option to purchase the land at any time within such five-year period for the agricultural evaluation of the land in the amount of $148,000. The county thereafter exercised such option and "purchased such property by a deed dated July 7, 1939," which deed was accepted by the board of supervisors on July 11, 1939, and was recorded July 20, 1939. The county was not authorized by any of the general provisions of the law of

the State of California to acquire land for a prison farm. It was necessary for the county to obtain special legislation in order to acquire land for such purpose. A special statute, chapter 843 of the Statutes of 1921 (a copy of which is attached to the complaint), was passed, which statute created the sole authority for the board of supervisors to acquire the land for the prison farm. Such statute specifically and solely authorized the board of supervisors to acquire land solely for the purpose of a prison farm and only so many acres of land suitable for agricultural purposes as should be necessary for such farm "as set forth in the statute" and for no other purpose. No part of the gas or oil underlying said property was necessary or appropriate for the purposes of said prison farm or for the purpose of any other legitimate public use, and the county was without any right to acquire rights to said oil and gas. Since the acquisition of said property from plaintiff, the county has received bonuses of approximately $500,000 from oil companies for oil and gas leases. About August 22, 1950, oil was first discovered on said land by the defendant The Texas Company under an oil and gas lease between said company and the county, under which lease The Texas Company had the exclusive right to drill for and produce oil upon said land, and under which lease the county received one-sixth of the gas and oil produced therefrom. Since August 22, 1950, oil has been produced from said land in large quantities. The total compensation paid by the county for the land was $148,000. The reasonable value of such property, including oil, gas and other hydrocarbons and minerals

underlying the land at the time of acquisition by the county, was in excess of $100,000,000.

Further allegations of the first cause of action were: Plaintiff A. M. Dunn is informed and believes that the value of the oil taken from said property to date by The Texas Company exceeds $21,000,000; the amount of royalties paid to the county is in excess of $3,500,000; and defendants continue to produce oil from said land and will continue to do so for many years at the rate of approximately $4,500,000 "worth of oil" per year.

Further allegations of the first cause of action were: An actual controversy exists between plaintiff and defendants in that: (a) Plaintiff contends that the county was without any right to take any interest in plaintiff's land beyond that necessary for the use of said land for agricultural purposes, and the county had no right to acquire any of the oil and gas underlying said land, whereas the defendants contend that the county had a right to acquire by purchase or otherwise the entire fee, including the oil and gas. (b) Plaintiff contends that he has at all times been the owner of the minerals, including oil, gas and other hydrocarbons underlying said land, and that the county was without right to enter into a lease respecting such minerals with The Texas Company, whereas the defendants contend that said oil and gas lease is valid and that The Texas Company has all the rights of a lessee under the lease. (c) Plaintiff contends that The Texas Company and other defendants at all times have been and now are without any right in taking

oil from the land. (d) Plaintiff contends that the county had no right to enter into any lease with The Texas Company, and that The Texas Company could not and did not obtain any right in connection with the property or the oil and gas by virtue of a lease from the county "which had no right or authority to execute such lease," and the defendants hold any profits taken from said land as constructive trustees for plaintiff and are obligated to account to plaintiff for the reasonable value of all such oil that has been taken, whereas the defendants contend that they are entitled to all oil taken from the land and are under no obligation to account for its value. (e) Plaintiff contends that the county is obligated to account to plaintiff for all purported royalties received by it for oil produced from the land, and that the county holds purported title to the oil and gas underlying such land as constructive trustee for plaintiff and that the county is obligated to reconvey such oil and gas rights to plaintiff, whereas the county contends that it is entitled to all such royalties and is not obligated to account to plaintiff or to reconvey such oil and gas rights.

A further allegation of the first cause of action was: About August 18, 1955, (the day preceding the filing of the complaint), plaintiffs filed a claim in writing with the board of supervisors for the damages and demands set forth in the complaint.

The second cause of action (to quiet title) incorporated, by reference, the allegations of the first cause of action (declaratory relief), except the allegations

as to the controversy between plaintiffs and defendants. The second cause of action alleged further: Plaintiff is and at all tir es mentioned in the complaint was the owner and entitled to the possession of all the oil and gas underlying the land. Defendants claim an interest therein adverse to the plaintiff; the claims of the defendants are without right; and that the defendants have no right or interest in the oil and gas underlying said premises.

The third cause of action (for damages for inverse condemnation) incorporated, by reference, the allegations of the first cause of action, except the allegations as to the cotnroversy between plaintiffs and defendants. The third cause of action alleged further: The county has taken property of plaintiff, namely, the oil and gas underlying the land, without just compensation having first been made or paid into Court for plaintiff. The value of the oil and gas and other hydrocarbons underlying said land was not included in the price established by the appraisers, and such price included only the value of the property for agricultural purposes. The value of such oil and gas, including the oil and gas heretofore produced from said land, is in excess of $100,000,000.

The fourth cause of action (for an accounting) incorporated, by reference, the allegations of the first cause of action, except the allegations as to the controversy between plaintiffs and defendants. The fourth cause of action alleged further: The defendants have acquired and hold the rights to the oil and gas underlying said property and all income derived from the

exploitation of such oil and gas rights and the development thereof in trust as constructive trustees for the use and benefit of plaintiff and are obligated to account to plaintiff for the value of all the oil and gas taken from the land by the defendants.

The prayer was for a declaration of the rights of the parties; an accounting for the oil and gas taken from the property, and for the proceeds therefrom; a decree quieting plaintiffs' title to the oil and gas and other minerals underlying the property; and for $50,000,000 damages.

The county demurred to the complaint upon the following grounds: the complaint did not state facts sufficient to state a cause of action; and each cause of action stated is barred by sections 318, 319, 338 (subds. 2 and 4), and 343 of the Code of Civil Procedure. The demurrer was sustained without leave to amend as to the second, third and fourth causes of action, but was overruled as to the first cause of action (declaratory relief).

The answer of the county alleged, among other things, that the cause of action for declaratory relief was barred by certain sections of the Code of Civil Procedure (being the same sections which are designated in its demurrer); that plaintiffs had been guilty of laches and unreasonable delay in bringing the action; and that plaintiffs are estopped to prosecute the action.

The answer of The Texas Company alleged, among other things, as follows: Each of the causes of action set forth in the complaint is barred by sections 336

and 338, subdivisions 2 and 4 of the Code of Civil Procedure, and by laches. Plaintiffs are estopped "from making" the claims set forth in the complaint as against said defendant in that about June 7, 1950, plaintiffs, in consideration of $3,614.73 paid to them by said defendant, executed and delivered to said defendant a written instrument (a copy of which was attached to the answer) whereby plaintiffs leased to said defendant the exclusive right to explore for and take oil, gas and other hydrocarbons from a 150-foot strip of land referred to in the complaint and excluded from the land description in the complaint; in the written instrument (lease of the strip) reference was expressly made to the oil and gas lease, dated April 20, 1950, between the county and The Texas Company; plaintiffs knew at the time of leasing the strip that the only method by which the strip could be developed for oil was by drilling wells on the land leased by the county to The Texas Company; the lease of the strip provided that the term of the lease granted therein was for 20 years and so long thereafter as oil or gas or other hydrocarbons are produced from the strip or from the land leased by the county to The Texas Company; the lease of the strip also provided that The Texas Company should pay to plaintiffs .297 of one per cent of the market value of all oil, gas, or other hydrocarbons produced from the land leased by the county to The Texas Company and from said 150-foot strip.

The Texas Company filed an amendment to its answer and attached thereto a copy of a grant deed

from plaintiffs to the county. The amendment alleged that the copy of the deed attached was a copy of the deed referred to in the complaint, and that plaintiffs executed and delivered said deed to the county on or about the day of its date (July 7, 1939).

The county made a motion (1) for a judgment of dismissal under section 1061 of Code of Civil Procedure (which section provides that the court may refuse to declare rights); (2) for judgment on the pleadings; and (3) for a summary judgment. The county filed, with its notice of said motion, an affidavit of James S. Allison. Copies of the following documents were attached to the affidavit: a notice of intention of the board of supervisors (dated June 6, 1939) to purchase the property described in the complaint; an affidavit of publication of such notice; a deed dated July 7, 1939, executed by Mr. Dunn and Mrs. Dunn which recited that they granted to the county the property described in the complaint; and an order of the board of supervisors accepting the deed. The affidavit states that Mr. Allison is the chief clerk of the board of supervisors, and that the copies of the documents attached to the affidavit are copies of the originals of said documents which are on file with said board.

The Texas Company made a motion for judgment on the pleadings.

The motion of the county for judgment on the pleadings and for a summary judgment, and the motion of The Texas Company for judgment on the pleadings, were granted. A document entitled, "Judg-

ment of Dismissal and Declaratory Judgment," was entered on March 30, 1956. The judgment, after reciting that the demurrer of the county had been previously sustained without leave to amend as to the second, third, and fourth causes of action, stated that plaintiffs take nothing as against the county or The Texas Company on the second, third and fourth causes of action; "that the plaintiffs are not, and neither of them is, the owner of or has any right in or to the oil, gas, or other hydrocarbons underlying the land described in plaintiffs' complaint"; and that neither the county nor The Texas Company holds or has held any of the profits from the land for or on behalf of the plaintiffs or either of them. Plaintiffs appeal from the judgment.

Mr. Dunn died on January 21, 1957, and Myrtle May Dunn, Alvin D. Dunn and Citizens National Trust and Savings Bank of Los Angeles, as "Executors" of the Estate of Alvin M. Dunn, were substituted "as plaintiffs and appellants" in place of A. M. Dunn.

Appellants contend (1) that the deed from the Dunns to the county conveyed no more than the county could condemn, that is, the deed conveyed an easement for use of the surface only and did not convey the fee title including the oil rights; and (2) that "if the deed actually conveyed the fee simple, including the oil rights, then it was of no effect and invalid for it was obtained by a mutual misunderstanding of the law, coupled with coercion practiced by the county and, in addition, was invalid because of constitutional prohibitions."

The oil, gas, and other hydrocarbons and minerals underlying the land will be referred to as the oil rights.

With reference to their contention that the deed to the county conveyed an easement for the use of the surface only and did not convey the fee title, appellants argue that the county in obtaining the deed acted under the Industrial Farm Act, and under that act the only interest the county could acquire by purchase or condemnation was an easement for use of the surface for farming (and jail) purposes; and that the deed did not convey a greater estate than the Act authorized the county to acquire.

The act, referred to by appellants as "Industrial Farm Act" (Stats. 1921, ch. 843, p. 1615; now Pen. Code §§ 4100-4135), in effect at the time plaintiffs executed the deed, was entitled, "An act providing for the establishment and administration of industrial farms or industrial road camps in the counties of the state and the commitment thereto and discipline of persons charged with or convicted of public offenses." The act provided, in part, as follows: "SECTION 1. In each county of this state an industrial farm . . . may be established under the provisions of this act . . . SEC. 4. . . . For the purpose of establishing such farm the board of supervisors may acquire by condemnation, purchase, lease or donation as many acres of land suitable for agriculture as may be necessary for the purposes of such farm. . . . The board of supervisors shall erect on such land such buildings and structures and make such improvements . . . as may

be necessary or convenient to carry out the purposes of this act. . . . SEC. 5. When said land has been acquired and such buildings and structures erected and improvements made . . . the board of supervisors shall adopt a resolution proclaiming that an industrial farm . . . has been established in the county . . ." In *People v. Cockrill,* 62 Cal.App. 22 (216 P. 78), the Court said at page 33: "The word 'purchase' has a definite and well-understood juridical meaning . . . and when used for the purpose of characterizing a transaction involving property of any kind it is readily to be understood therefrom that there has been an acquisition by one or more parties of the title to such property." In *McCarty v. Southern Pac. Co.,* 148 Cal. 211 (82 P. 615), the Court said at page 221:

"It may be granted that where the statute in terms provides for the condemnation of the 'land' or 'lands' for the public uses and purposes, or where an equivalent term is used, it will usually be construed to authorize the taking of the fee." In *Crockett Land & Cattle Co. v. American Toll Bridge Co.,* 211 Cal. 361 (295 P. 328), plaintiff's land had been taken by condemnation for an approach to a toll bridge, and the bridge company had built houses under the floor level of the bridge and used them in connection with the operation of the bridge. About three years after the condemnation decree, the plaintiff commenced an action to recover possession of the land (and claimed the right to occupy the houses), on the theory that the condemnation did not vest the fee title of the land in the condemner, and that the bridge company acquired

only an easement in the land—that the bridge company did not have the right to condemn the fee but had the right to condemn only an easement. In that case the Court said at page 364: "The law is that where the statute in terms provides for the condemnation of lands for public use it will be construed to authorize the taking of the fee." It was held therein that the fee title was condemned and that plaintiff was not entitled to occupy the houses. The act, referred to as the Industrial Farm Act, authorized the board of supervisors to acquire by purchase or condemnation "as many acres of land suitable for agriculture as may be necessary for the purposes of such farm." (Appellants do not contend that the land was not suitable for agriculture.) Appellants argue further to the effect that the condemnation provisions of said act are to be considered in connection with the provisions of section 1239 of the Code of Civil Procedure which relates to condemnation generally, that under said section 1239 (as it read in 1921, when it was adopted, and in 1939, when negotiations were had with the Dunns) the county could not acquire the fee title to the property for a prison farm but could acquire only an easement for that purpose. Section 1239 of the Code of Civil Procedure, as it read in 1921 and in 1939, was in part, as follows: "The following is a classification of the estates and rights in lands subject to be taken for public use: 1. A fee simple, when taken for public buildings or grounds, or for permanent buildings . . . or when the property is taken by any . . . county, . . . 2. An easement, when taken for any other

use . . ." Section 1239 of the Code of Civil Procedure did not limit the interest the county could acquire in land for a prison farm to an easement. The county was empowered to acquire the fee title to the land by condemnation. There was no condemnation proceeding herein, but reference is made to condemnation for the reason appellants argue that the county could not acquire more by the deed than it could by condemnation, and that by condemnation, it could acquire only an easement. Appellants' contention that the deed conveyed only an easement is not sustainable.

With reference to appellants' contention to the effect that the deed was void as a conveyance of the oil rights, appellants argue that oil rights are separate and distinct property from the surface of the land and have no public use, and therefore the county could not have taken the oil rights by condemnation or purchase. They argue further that the representation that the Dunns could not under any conditions reserve the oil rights was a misstatement of law, and since the Dunns executed the deed in reliance upon such representation, the deed was void as a conveyance of the oil rights. As above stated, the county was empowered to acquire the fee title by condemnation or purchase. A fee title to property includes the oil rights. Oil rights are defined as the exclusive right to drill for and produce oil from the land. (See *Bernstein v. Bush*, 29 Cal.2d 773, 778 (177 P.2d 913); *Delaney v. Lowery*, 25 Cal.2d 561, 571 (154 P.2d 674).) The representation to the effect that appellants could not under any circumstances reserve the oil rights was

susceptible of various interpretations. The whole representation, according to the complaint, was that the Dunns could not reserve the mineral rights under any conditions *for the reason that the property was to be used as a prison farm* and that *in order to protect the property for that purpose* no prospecting or drilling for oil could be made thereon. The representation should not necessarily be interpreted to mean that as a matter of law the oil rights could not be reserved. It might be interpreted as meaning that as a matter of policy or efficiency in operating a prison farm reservation of oil rights, which might interfere with the security of the prison, should not be allowed. In any event the statement was an opinion given at a time when a condemnation proceeding and the establishment of a prison farm were being discussed. If it was an opinion of law that the county was empowered to acquire the fee title (which would include the oil rights) the opinion was correct. If it was an opinion of law that even though the county could take the fee title by condemnation it was also required as a matter of law to take the oil rights, the opinion was not correct. Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison. The reason stated by the county agents (as the reason for

not allowing the reservation) indicates that the agents were not giving an opinion as to the law. It cannot properly be concluded that the representation was a misstatement of law or that by reason of such representation the deed was void.

Appellants argue further that the taking of the oil rights was not necessary in order to protect the property for use as a prison farm, and that the representation by the county's agents that the taking of the rights was necessary for such protection was false. The county alleged in its answer that the action, insofar as it is based on fraud and mistake, is barred by section 338, subdivision 4, of the Code of Civil Procedure. That section provides that an action for relief on the ground of fraud or mistake must be commenced within three years from the date the cause of action accrued and that the cause of action shall not be deemed to have accrued until discovery by the aggrieved party of the facts constituting the fraud or mistake. In *Hobart v. Hobart Estate Co.*, 26 Cal.2d 412 (159 P.2d 958), the court said at page 437: "The provision tolling operation of the statute until discovery of the fraud has long been treated as an exception and, accordingly, this court has held that if an action is brought more than three years after commission of the fraud, plaintiff has the burden of pleading and proving that he did not make the discovery until within three years prior to the filing of his complaint." (See also *English v. City of Long Beach*, 126 Cal.App.2d 414, 421 (272 P.2d 875).) The same rule applies to actions for relief on the ground of mistake.

(See *Goodfellow v. Barritt*, 130 Cal.App. 548, 559 (20 P.2d 740).) In the present action, plaintiffs allege, in effect, that in July, 1939, they made and delivered the deed to the county; that about August, 1950, The Texas Company, while acting under an oil lease made by the county, discovered oil on the property, and since that time oil has been produced therefrom. The complaint was filed in August, 1955, which was more than three years after oil was discovered on the property. Plaintiffs did not allege when they discovered that the county had executed the lease with The Texas Company, or when they discovered that The Texas Company commenced drilling operations on the property, or when they discovered that The Texas Company had found oil thereon. Appellants assert, however, that oil rights are regarded as an interest or estate in real property, and that "an action for recovery of real property must be commenced within five years, even though possession was obtained by fraud or undue influence"; and since the first invasion of plaintiffs' property rights in the oil, through the medium of production of oil, occurred August 22, 1950, and since the complaint was filed August 18, 1955, it was filed within five years after the original trespass. As above stated, the county also pleaded that the action is barred by sections 318, 319, and 339, subdivision 2, of the Code of Civil Procedure. Section 318 provides: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seised or pos-

sessed of the property in question, within five years before the commencement of the action." Section 319 provides: "No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appears that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seised or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made." Section 338, subdivision 2, (when read in connection with §335) provides that an action for trespass upon or injury to real property must be commenced within three years. As asserted by appellants, oil rights are regarded as an interest in real property. (See *Bernstein v. Bush,* 29 Cal.2d 773, 778 (177 P.2d 913); *Standard Oil Co. v. J. P. Mills Organization,* 3 Cal. 2d 128, 132-133 (43 P.2d 797); *Carlson v. Lindauer,* 119 Cal.App.2d 292, 302 (259 P.2d 925).) The complaint alleges that the Dunns executed the deed in July, 1939, and that oil was discovered by The Texas Company about August 22, 1950. The action was commenced August 19, 1955, which was more than 16 years after the Dunns executed the deed, and about five years after the discovery of oil. If the action be regarded as one to recover oil rights (an interest in real property) it is barred by section 319 of the Code of Civil Procedure (five years); if it be regarded as one to recover for trespass upon or injury

to real property it is barred by said section 338, subdivision 2, (three years); if it is based on fraud or mistake it is barred by said section 338, subdivision 4, (three years). "(T)he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations." (*Maguire v. Hibernia S. & L. Soc.*, 23 Cal.2d 719, 733 (146 P.2d 673, 151 A.L.R. 1062).) "(T)he period of limitations applicable to ordinary actions . . . should be applied in like manner to actions for declaratory relief." (*Maguire v. Hibernia S. & L. Soc., supra*, 734.)

The Texas Company attached to its answer a copy of the oil lease which said company and the Dunns entered into on June 7, 1950, and in which lease reference was expressly made to the oil lease which the county and said company entered into on April 20, 1950. Section 448 of the Code of Civil Procedure provides: "When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file . . . an affidavit denying the same. . . ." Plaintiffs did not file such an affidavit, and therefore the genuineness and due execution of oil lease (between The Texas Company and the Dunns) were admitted. It appears from that lease that Mr. and Mrs. Dunn knew on June 7, 1950, that the county and The Texas Company had entered into an oil lease on April 20, 1950, whereby the county had granted The Texas Company the right to drill for and produce oil from the property. It

therefore appears that Mr. and Mrs. Dunn knew on June 7, 1950, which was more than five years before the action was commenced on August 19, 1955, that the county was not adhering to its alleged representation "that in order to protect the property for use" as a prison farm no drilling for oil could be made thereon. If the Dunns considered that such representation was fraudulent or was a mistake and that, by reason thereof, they had a cause of action for relief on the ground of fraud or mistake, it appears that they discovered the facts constituting the fraud or mistake more than five years before the action was commenced (i.e., they discovered the fact on June 7, 1950, and the action was commenced on August 19, 1955).

Appellants assert that they could have obviated the contentions as to the statute of limitations, laches, and estoppel by amending the complaint. They state that the amendment would have been to the effect that the plaintiffs continued to rely on the false representations of the county agents, regarding the reservation of oil rights, until about June 6, 1955, when an attorney (not present counsel) informed them that "misrepresentations as to the existing law had been made to them" when the agents said that plaintiffs could not under any condition retain the mineral rights. As above stated, the whole representation, already alleged in the complaint, includes a statement of the reason the oil rights could not be reserved. That reason indicates that the agents were not making a representation as to the law but were stating a matter of policy in operating a secure prison farm. The pro-

posed amendment would merely add to the existing allegations a statement that plaintiffs relied on the presently alleged representation until an attorney informed them to the effect that the representation was a misrepresentation as to law. The trial court, in determining the matter of an amendment, could consider the statements in the lease between plaintiffs and The Texas Company which established that plaintiffs knew on June 7, 1950 (more than five years before the commencement of the action) that the county had entered into an oil lease with The Texas Company. In view of such knowledge by the plaintiffs, an amendment to the effect that plaintiffs continued thereafter (for more than five years) to rely on the representation that the oil rights could not be reserved would not materially change plaintiffs' position with respect to the issues. During the period of eleven years following the making of the deed by plaintiffs and preceding the making of the oil lease by the county, the plaintiffs apparently did not seek information as to the accuracy of the alleged legal opinion given by the county agents. Also, during a period of approximately five years after plaintiffs knew that the oil lease had been made by the county, they apparently did not seek information as to the accuracy of the alleged legal opinion. It appears that it was after oil was produced in large quantities that plaintiffs received information that there was an alleged misrepresentation as to law.

Appellants contend further that the deed was void as a conveyance of the oil rights because the Dunns executed the deed under threats by the county agents

of "costly condemnation proceedings," which threats were a "form of coercion." This contention is not sustainable. The county had the right to maintain a condemnation proceeding, and the fact that the agents said that such a proceeding would be costly would not constitute a ground for declaring the deed void as a conveyance of the oil rights. Furthermore, the county pleaded that the action was barred by section 343 of the Code of Civil Procedure. That section provides that an action for relief not otherwise provided for must be commenced within four years after the cause of action accrued. In *Wade v. Busby,* 66 Cal.App.2d 700 (152 P.2d 754), it was said (p. 702) that an action to set aside a deed upon the ground of undue influence was governed by the four-year period of limitation prescribed in section 343 of the Code of Civil Procedure. In the present case the claim regarding coercion was barred by said section.

Appellants contend further that the deed was void as a conveyance of the oil rights because the purchase price was based on the value of the land for agricultural purposes. The complaint alleged that the option agreement between plaintiffs and the county provided that the county would have the option to purchase the land "for the agricultural evaluation of the land in the amount of $148,000." This contention is not sustainable.

The Texas Company pleaded: (1) that plaintiffs are estopped to claim as against it that the deed to the county did not convey the oil rights; and (2) that any such claim as against it is barred by laches. It

argues, in effect, that plaintiffs acknowledged the validity of the lease between The Texas Company and the county by execution of the lease between plaintiffs and The Texas Company covering the 150-foot strip; that plaintiffs thereby induced The Texas Company to carry on the development of the property in the belief that it held a lease; that plaintiffs may not now take a contrary position; and that since it appears from the allegations of the complaint that oil was discovered on the property by The Texas Company about August 22, 1950, plaintiffs' claim is barred by laches. On June 7, 1950, the Dunns and The Texas Company executed an oil and gas lease covering the 150-foot strip, which lease refers in several places to the oil and gas lease between the county and The Texas Company. The royalty payable to the Dunns under the 150-foot strip lease is based upon production of oil and gas from the 150-foot strip and from the land leased by the county to The Texas Company. Appellants are estopped to claim as against The Texas Company that the deed to the county did not convey the oil rights. In view of that conclusion, it is not necessary to determine whether the claim of appellants against The Texas Company is barred by laches.

The judgment is affirmed.

Wood (Parker), J.

Shinn, P. J., and Vallée, J., concurred.

Filed December 6, 1957,
James E. Brown, Clerk.